

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN MIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. C11-647-JCC-BAT
CR09-0083-JCC

**REPORT AND
RECOMMENDATION**

John Min filed a pro se 28 U.S.C. § 2255 motion in which he sought to vacate the 48-month sentence he received after pleading guilty to wire fraud. Dkt. 1 The Court previously dismissed four of the five claims Mr. Min raised. Dkt. 12. However, as to Mr. Min's claim that his trial lawyer was ineffective by failing to file a notice of appeal, the Court ordered an evidentiary hearing and appointment of counsel. *Id.*

On March 5, 2012, Assistant Federal Public Defender John Carpenter was appointed to represent Mr. Min. On April 20, 2012, Mr. Min and the United States filed a stipulated motion for voluntary dismissal without prejudice. Dkt. 14. In his motion, Mr. Min indicates he no longer wishes to proceed with the action and acknowledges that dismissing this case without prejudice will not excuse Mr. Min from complying with the applicable statute of limitations.

Based on the parties' stipulated motion to dismiss the matter and the record in this case, the

1 Court recommends:

- 2 (1) **GRANTING** the stipulated motion to dismiss the matter without prejudice (Dkt. 14);
3 (2) **STRIKING** the evidentiary hearing currently set for June 19, 2012;
4 (3) If this recommendation is adopted, it should be approved immediately.

5 A proposed order accompanies this Report and Recommendation. The Clerk shall provide
6 the parties and the Honorable John C. Coughenour a copy of this Report and Recommendation.

7 DATED this 23rd day of April, 2012 .

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10 BRIAN A. TSUCHIDA
United States Magistrate Judge